

REMARKS

Reconsideration of claims 1-3, 6-12, 40-53, 69-71 and 73-75 is respectfully requested.

The rejection of claims 1-3, 6-12, 40-53, 69-71 and 73-75 under 35 USC 103(a) as obvious over Yamamoto et al., JP62122671, hereafter, JP'671, is respectfully traversed. The rejection is based primarily on the assertion that the only “difference between applicant’s claimed composition and the composition of Yamamoto et al. is that Yamamoto et al. do not determine [or characterize] the pseudoplasticity index of the composition.” Nevertheless, “[i]t would be obvious to one having ordinary skill in the art at the time [of] the claimed invention was made to prepare the composition suggested by Yamamoto et al. and to determine the physical characteristics such as pseudoplasticity index of said compositions in order to use it as a highly viscous liquid … during intraocular surgery.” Official Action, 9/20/07, pages 3 and 4.

Applicants would generally agree with the examiner’s conclusions above if the examiner is stating that one of skill having prepared a viscoelastic composition would then take the next step and measure or determine the viscoelastic properties, e.g., the pseudoplasticity index, of the compositions. Applicants, however, are not claiming a series of steps one of skill would generally take in developing a new viscoelastic composition. Applicants are claiming much more.

Applicants are claiming a composition comprising a select concentration range of hyaluronic acid and hydroxypropylmethyl cellulose (“HPMC”) at a specific weight ratio. This composition is further defined by a pseudoplasticity index from 160 to 5000 (claim 1). This composition is still further defined by zero-shear viscosity from about 6×10^4 cps to 4×10^6 cps (claim 7), a medium-shear viscosity from about 10000 cps to about 30000 cps (claim 8), a high-shear viscosity from about 500 cps to 2000 cps (claim 9) or having a crossover frequency of 0.1 or less (claim 10). Moreover, Applicants respectfully submit that it is the concentration and weight ratio of the hyaluronic acid and HPMC that provides the recited viscoelastic properties.

The pseudoplasticity index is a measure of the difference in viscosity of the composition at or near zero shear (viscosity at 0.009 s^{-1}) to the viscosity at high shear

(viscosity at 369 s⁻¹). Applicants submit that there is no description in JP'671 of having a weight ratio of HPMC to HA from 0.1 to 1.0. The rejection fails to recognize the importance of the weight ratio, and how this weight ratio is required if the claimed composition is to possess the recited pseudoplasticity index. There is no specific description in JP'671 of such a mixture having the claimed weight ratio, and consequently, the claimed pseudoplasticity index. More importantly, there is no suggestion in JP'671 to prepare such a mixture having any one of the viscoelastic properties recited in the claims.

Applicants respectfully submit that there is no teaching or suggestion in the JP'671 application of any one viscoelastic composition having any one of these recited properties. In other words, Applicants are asking where in the JP'671 application does it teach or suggest to one of skill to prepare a hyaluronic acid and HPMC composition having the recited properties. True, one of skill can make any viscoelastic composition comprising hyaluronic acid and HPMC and determine a pseudoplasticity index, but why would one of skill having the complete knowledge of Yamamoto at hand direct the preparations of such compositions to arrive at any one of recited viscoelastic properties above. A proper rejection under § 103(a) still requires that each and every element of the claimed invention be described or suggested in at least one reference. The complete teachings and suggestions of Yamamoto fail this test. For this reason alone the rejection is improper under § 103(a) as and should be withdrawn.

Applicants and the examiner appear to be in agreement as to the general teachings of the JP'671 application, which Applicant's summarize as follows. The JP'671 application describes a viscoelastic composition that comprises hyaluronic acid (HA), hydroxypropylmethyl cellulose (HPMC) or a mixture thereof. The JP'671 application also describes a special mixing process to maintain the homogeneity of the composition, that is, to prevent one or more components from precipitating out of the aqueous solution. The final concentration of HA, HPMC or any mixture thereof is preferably maintained from 1% to 2 w/v%. Accordingly, the most generous reading of JP'671 describes that the HPMC and HA can be used alone (independently of the other), as shown by the provided examples, or perhaps used as a mixture, and that the concentration of HA, HPMC or a

mixture thereof be from 1.0 to 2.0 w/v%. Applicants respectfully submit, however, that such an understanding alone is not sufficient to reject the pending claims under § 103(a).

In view of the above, it is submitted that the claims are patentable and in condition for allowance.

December 12, 2007

Respectfully submitted,



Joseph Barrera
Attorney for the applicants
Registration No. 44,522
(585) 338-8180

Bausch & Lomb, Incorporated
One Bausch & Lomb Place
Rochester, New York 14604